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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969 No. 264

IN THE MATTER OF THE CONSERVATORSHIP OF THE WELLSVILLE NATIONAL BANK, WELLSVILLE, PENNSYLVANIA

GORDON S. MILLER and FRANCES G. MILLER
Petitioners

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR REHEARING

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PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA

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PETITION FOR REHEARING

The Petitioners herein respectfully move this Court for an order: (1) Vacating its denial of the Petition for Writ of Certiorari entered October 13, 1969 and (2) Granting the Petition.

As grounds for this motion, Petitioners state the following:

This case clearly presents the issue of the power of the Comptroller of Currency to dispose of the assets of a national bank, and at the same time completely (for all practical purpose) wipe out the entire equity of substantial stockholders of the national bank, without a due process hearing.

The arguments are fully set forth in the Petition itself. The leading case on point, Minichello v Saxon, 337 F.2d 75 (1964) also decided by the Third Circuit, requires a due process hearing. Although technically decided under 12 U.S.C. §181 rather than 12 U.S.C. §203 (Bank Conservation Act), the two provisions are clearly interrelated and Minichello should have been regarded as binding by the Third Circuit.

The Circuit Court's argument that Petitioners had six months in which to challenge the affidavits of the Comptroller on which the District Court acted overlooks the fact that the

Petitioners had not been granted leave to intervene and therefore had no standing. The filing of counter-affidavits was never suggested, to the best of Counsel's knowledge, during the District Court's proceedings. (The present attorneys did not represent Petitioners in the District Court proceedings).

CONCLUSION

For the reasons set forth above, as well as those contained in the Petition for Writ of Certiorari, Petitioners pray that this Court grant rehearing of the order of denial, vacate the order, grant the Petition and review the judgment and opinion below.

Respectfully submitted,

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